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August 2, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 20, 2007

Case Number: TSO-0492

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} After reviewing the evidence before me I find the Individual's access authorization should not be restored.

I. Background

In 1996 and 1989, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DWI). During an evaluation for the Human Reliability Program in June 2006, he was advised to stop consuming alcoholic beverages.

On November 21, 2006, the Individual was referred to a DOE Consulting Psychiatrist. After interviewing the Individual and reviewing his Personnel Security File, the DOE Consulting Psychiatrist wrote an evaluative report describing her findings.^{3/} She opined that the Individual is alcohol dependent.^{4/} She also indicated that the Individual has an illness which causes or may cause, a significant defect in his judgment or reliability.^{5/}

^{1/} 10 C.F.R. Part 710, Subpart A.

^{2/} 10 C.F.R. § 710.5(a).

^{3/} DOE Ex. 8.

^{4/} *Id.* at 29.

^{5/} *Id.*

On March 13, 2007, the LSO issued a Notification Letter to the Individual, citing the incidents described above as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under Criteria H^{6/} and J.^{7/} Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability."^{8/} Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse."^{9/} Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Acting Director appointed me as the Hearing Officer in this case.^{10/} I convened a hearing in this matter.^{11/}

At the hearing, the Individual represented himself. He offered his own testimony, along with the testimony of his father and sister and one co-worker to demonstrate that he has been abstinent since August 2006 and that those who know him well believe that he will not consume alcoholic beverages in the future. The Local Security Office presented one witness, the DOE Consulting Psychiatrist. The local DOE Office entered 15 exhibits into the record.

II. The Hearing

A. The Individual

At the hearing, the Individual testified that he stopped consuming alcoholic beverages in August 2006. Hearing Transcript (Tr.) at 12. He declared that he does not have any desire to consume alcoholic beverages now or in the future. Tr. at 14. His last alcohol related infraction was in 1996. Tr. at 25. The Individual declared that his lifetime goal is sobriety. Tr. at 9.

The Individual testified that he has been attending Alcoholics Anonymous (AA), since April 2007. Tr. at 8. He testified that he attends AA for the support, not because he need to go to remain sober. Tr. at 10. He testified that most of the attendees are there because

^{6/} 10 C.F.R. § 710.8(h).

^{7/} *Id.* at § 710.8(j).

^{8/} *Id.* at § 710.8(h).

^{9/} *Id.* at § 710.8(j).

^{10/} 10 C.F.R. § 710.25(a), (b).

^{11/} 10 C.F.R. § 710.25(g).

their attendance is court ordered, and he is not comfortable being there. Tr. at 12. The Individual testified that he attends an AA meeting twice a week. Tr. at 17. He testified that he thought he had a sponsor, but the sponsor has not attended a meeting for about one month. Tr. at 40. He has called the sponsor but not received a call in return. Tr. at 40.

B. The Individual's Sister

The Individual's sister testified that the Individual has not consumed alcoholic beverages since the summer of 2006. Tr. at 23. She testified that the Individual is like a father to her son, and that they spend a lot of time together. Tr. at 26-27. She further declared that since the Individual received the DWI in 1996, he only drank at home so he would not have to drive. Tr. at 25. The Individual's sister testified that AA depressed the Individual and that the Employee Assistance Program did help him understand how his consumption of alcoholic beverages affected his life. Tr. at 28. She testified that her mother and grandfather are both alcohol dependent. Tr. at 29. She believes that the Individual is an open, honest person. Tr. at 26.

C. The Individual's Father

The Individual's Father testified that he sees his son daily and the Individual has not consumed alcoholic beverages since August 2006. Tr. at 32. The Individual's father believes the Individual's life is better since he stopped consuming alcohol and that improvement in his life has motivated the Individual to maintain his abstinence. Tr. at 33. He testified that the Individual regularly attends AA. Tr. at 35. He believes the Individual does not need to attend AA to maintain his sobriety. Tr. at 38. The Individual quit consuming alcoholic beverages on his own. Tr. at 35. The Individual does what he sets his mind to do, in this case to stop consuming alcoholic beverages. Tr. at 37.

D. The Co-worker

The co-worker testified that he has been working with the Individual for about 10 years. Tr. at 18. The Individual does his job well. Tr. at 20. The co-worker testified that the Individual told him he had stopped consuming alcoholic beverages. Tr. at 20-21. He believes that the Individual is a reliable, trustworthy person. Tr. at 21.

E. The DOE Consulting Psychiatrist

At the hearing, the DOE Consulting Psychiatrist confirmed her diagnosis that the Individual was alcohol dependent. Tr. at 43. She testified that the Individual has a strong genetic loading for alcohol dependence. Tr. at 43. She stated that his insight into his problem has only improved marginally. Tr. at 43-44. She believes the Individual's

attendance at the Employee Assistance Program was too brief to provide the Individual with an understanding of his alcohol problem. Tr. at 43-44, 50.

The DOE Consulting Psychiatrist testified that the Individual was honest during her interview with him when he indicated that he drank alcoholic beverages because he was “bored.” Tr. at 44. She believes his nephew provides a good motivation for the Individual to stay sober. Tr. at 45. In addition, the Individual and the nephew are active together, which provides productive non-alcohol related activities. Tr. at 45. The DOE Consulting Psychiatrist testified that she believes that the Individual has a moderate to high risk of relapse. Tr. at 51. She would like to see the Individual become more engaged in AA. Tr. at 49-50. She believes that the Individual needs to maintain his sobriety for at least three years to establish a low probability of relapse. Tr. at 48.

III. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where “information is received that raises a question concerning an individual's continued access authorization eligibility.”^{12/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” See 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. 10 C.F.R. § 710.7(c). After consideration of all the relevant information in the record, I conclude that a significant security concern was raised by the derogatory information. Consequently, it is my decision that the Individual's access authorization should not be restored.

IV. Findings and Conclusions

My review of the testimony presented in this case, as well as the other evidence contained in the record, leads me to find that the Individual has an alcohol problem that raises a

^{12/} 10 C.F.R. § 710.10(a).

security concern. After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a).

At the time the Individual met with the DOE Consulting Psychiatrist, he was beginning his reformation and rehabilitation process. Nonetheless, at the time of the hearing, the Individual had been abstinent for only nine and one half months. He attends AA, but he does not appear to be dedicated to AA and does not have a sponsor. I believe, based on the DOE Consulting Psychiatrist's opinion, that a nine and one half month period is too short for the Individual to be considered reformed or rehabilitated.

Therefore, I conclude that at this time the evidence does not demonstrate to me that the Individual's alcohol-related problems is unlikely to recur. The Individual provided little evidence on that point but the expert testimony of the DOE Consulting Psychiatrist was persuasive. She stated at the hearing, that his chance of relapse was moderate to high. Consequently, I find that concerns raised by the DOE Consulting Psychiatrist's diagnosis that the Individual is alcohol dependent has not been mitigated by the evidence provided by the Individual.

V. *Conclusion*

Upon consideration of the record in this case, I find that Criteria H and J security concerns regarding the Individual's eligibility for a security clearance have not been mitigated. Therefore, I conclude that the Individual has not shown that restoring his access authorization would not endanger the common defense and security. Therefore, restoration of his access authorization would be clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be restored. The Individual may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: August 2, 2007